Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** May 23, 2012

Thru: Bridget C. Bohac, Chief Clerk

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Subject: Update on federal court challenges under the Federal Clean Air Act regarding EPA actions affecting the TCEQ.

A. Greenhouse Gas Litigation

1. Endangerment Finding:

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; and Barry Smitherman, Chairman of the Texas Public Utility Commission v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia, Case No. 10-1041

Procedural History:

02/16/2010	Petitions for Reconsideration and Review filed
09/03/2010	Petition for Review of Denial of Reconsideration
05/20/2011	Texas' Opening Brief for State Petitioners and Supporting Intervenors
08/18/2011	EPA's Opening Brief
10/17/2011	Texas' Reply Brief
02/29/2012	Oral Argument; case under submission

Case Summary: Texas argues: (1) the EPA exceeded its statutory authority, abused its discretion, and acted arbitrarily and capriciously by violating the Clean Air Act section 307(d), the Administrative Procedures Act, the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the EPA," and other applicable law; (2) the EPA exceeded its statutory authority, abused its discretion, and acted arbitrarily and capriciously in violation of Clean Air Act section 307(d) by delegating its statutory responsibilities to perform an endangerment analysis to a foreign entity, the Intergovernmental Panel on Climate Change (IPCC), and other organizations, and relying upon "assessments" from this foreign entity and other organizations; and (3) the EPA's Endangerment Finding, together with the text of Clean Air Act section 202(a), demonstrate that the outer limits of the non-delegation precedents of the U. S. Supreme Court have been exceeded, violating the separation of powers principle under the U.S. Constitution, rendering the Endangerment Finding unlawful.

2. Johnson Memo or Timing Rule

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commission; Texas Railroad Commission; Texas General Land Office; State of Alabama; State of South Carolina; State of South Dakota; Commonwealth of Virginia; and Haley Barbour, Governor of the State of Mississippi v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia, Case No. 10-1128

Procedural History:

06/01/2010	Petitions for Reconsideration and Review filed
06/20/2011	State Petitioners and Supporting Intervenor Opening Brief
09/16/2011	EPA Brief
11/16/2011	Texas' Reply Brief
02/29/2012	Oral Argument; case under submission

Case Summary: Texas is challenging the EPA's "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, Final Rule" (Johnson Memo or Timing Rule). Texas' Statement of Issues: (1) Whether pollutants for which there are no NAAQS can become "subject to regulation" for purposes of triggering permitting requirements under the PSD program; (2) Whether the PSD program is applicable to pollutants that are generally uniform in concentration throughout the atmosphere and defy area-specific effects; (3) Whether the act requires a SIP Call to accord states an appropriate process by which to conform their plans to the PSD Interpretive Rule; (4) Whether the act allows the regulation of an air pollutant under Title II to automatically trigger its regulation under the PSD program; (5) Whether it is arbitrary and capricious for the EPA to adopt an interpretation of the act that causes absurd results; (6) With respect to regulation of GHG from stationary sources, the EPA's interpretive rule exceeds its statutory authority or is arbitrary, capricious, or an abuse of EPA discretion by relying on the Endangerment Finding that (a) violates the act, the APA , EPA guidelines, and other applicable law; and (b) was improperly delegated responsibility to perform an endangerment analysis to a foreign entity, the IPCC among other organizations; and (7) Whether the interpretive rule together with the Endangerment Finding exceeds the limits of the U.S. Supreme Court's non-delegation precedents, violating the separation of powers principle under the U.S. Constitution.

3. Tailpipe Rule

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commission; Texas Railroad Commission; Texas General Land Office; State of Alabama; State of South Carolina; State of South Dakota; Commonwealth of Virginia; Haley Barbour, Governor of the State of Mississippi v. U.S.

Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia, Case No. 10-1182

Procedural History:

07/06/2010 Petition for Review filed
06/03/2011 State Petitioners and Supporting Intervenor Brief
09/01/2011 EPA Brief
10/31/2011 Texas' Reply Brief
02/28/2012 Oral Argument; case under submission

Case Summary: Texas is challenging the EPA's Final Light-Duty Vehicle GHG Emission Standards and CAFE Standards (Tailpipe Rule). Statement of Issues: (1) Whether it is arbitrary and capricious for the EPA to promulgate the Tailpipe Rule without considering the economic impacts that result from the rule's triggering of the Prevention of Significant Deterioration ("PSD") program for greenhouse gases (GHGs); (2) Whether the EPA acts contrary to section 202(a)(2) of the CAA by allowing the Tailpipe Rule to take effect before GHG control technologies for PSD sources are developed and applied; (3) Whether it is arbitrary and capricious for the EPA to adopt a rule that causes absurd results; (4) Whether, with respect to the regulation of GHGs from stationary sources, the EPA's Tailpipe Rule exceeds the EPA's statutory authority or is arbitrary, capricious, or an abuse of the EPA's discretion by relying on the EPA's "Endangerment Finding" that violates CAA section 307(d), the Administrative Procedures Act, the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information disseminated by EPA," and other applicable law; (5) Whether, with respect to regulation of GHGs from stationary sources, the EPA's Tailpipe Rule exceeds the EPA's statutory authority or is arbitrary, capricious, or an abuse of the EPA's discretion in violation of CAA section 307(d) by relying on the EPA's "Endangerment Finding" in which it improperly delegated its statutory responsibility to perform an endangerment analysis to a foreign entity, the Intergovernmental Panel on Climate Change (IPCC), among other organizations; and (6) Whether the EPA's Tailpipe Rule, together with CAA section 202(a), the EPA's "Endangerment Finding," and the EPA's "PSD Interpretive Rule," exceeds the limits of the U. S. Supreme Court's non-delegation precedents, violating the separation of powers principle under the U.S. Constitution.

4. Tailoring Rule

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commission; Texas Railroad Commission; and Texas General Land Office v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia, Case No. 10-1222

Procedural History:

08/02/2010 Petition for Review
06/20/2011 State Petitioners and Supporting Intervenor's Opening Brief

09/16/2011	EPA Brief
11/16/2011	Texas' Reply Brief
02/29/2012	Oral Argument; case under submission.

Case Summary: Texas is challenging the EPA's PSD and Title V GHG Tailoring Rule (Tailoring Rule). Statement of the Issues: (1) Whether the EPA's decision to rewrite specific emission rates in the Clean Air Act's text for PSD and Title V applicability is arbitrary and capricious or contrary to law; (2) Whether the EPA's decision to require the State of Texas to reinterpret or revise its State Implementation Plan to conform to the Tailoring Rule without adequate notice and in a timeframe that contravenes the EPA's existing Part 51 regulations is arbitrary and capricious or contrary to law; and (3) Whether the EPA may rely on the absurd results and purported administrative necessity or "one step at a time" doctrines to promulgate a rule where the EPA itself created the absurd results in question through its unlawful interpretation of the Clean Air Act.

5. GHG SIP Call

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commissioners Smitherman, Nelson, and Anderson; Texas Railroad Commission; and Texas General Land Office v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the 5th Circuit, Case No. 10-60961; transferred to the U.S. Court of Appeals for the D.C. Circuit, Case No. 11-1037

Procedural History:

12/15/2010	Petition for Review filed with 5th Circuit
02/14/2011	Petition for Review filed with D.C. Circuit
02/24/2011	Order transferring case to the D.C. Circuit
12/01/2011	Order establishing briefing schedule (Joint brief of State Petitioners and Joint brief of Non-State Petitioners and Intervenors for Petitioners due 02/08/12; Respondent (EPA) brief due 04/09/12; Reply brief due 05/14/12; final briefs 06/05/12)
02/08/2012	Petitioners' Brief (Texas and Wyoming)
04/09/2012	EPA's Brief
05/14/2012	Petitioners' (Texas) Reply Brief (joined by Wyoming)

Case Summary: Texas is challenging the EPA's "Action to Ensure Authority to Issue Permits under the PSD Program to Sources of GHGs: Finding of Substantial Inadequacy and SIP Call (GHG SIP Call)" that was final Dec. 13, 2010. The petition is based on the following: the action is contrary to the CAA and the constitution, and it is arbitrary and capricious.

6. Partial SIP Disapproval/ GHG FIP

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commissioners Smitherman, Nelson, and Anderson; Texas Railroad Commission; and Texas General Land Office v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 10-1425

Procedural History:

12/30/2010 Petition for Review
06/01/2011 Texas' Motion for Coordination of Related Cases before a single panel

See case below for additional updates.

Case Summary: Texas is challenging the EPA's "Determination Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and FIP Regarding Texas PSD Program (Partial SIP Disapproval/GHG FIP), Interim Final Rule" that was final and effective Dec. 30, 2010. The petition is based on the following: the action is contrary to both the CAA and fundamental principles of administrative law, and is arbitrary and capricious and contrary to law.

State of Texas; Rick Perry, Governor; Greg Abbott, Attorney General; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utility Commissioners Smitherman, Nelson, and Anderson; Texas Railroad Commission; and Texas General Land Office v. U.S. Environmental Protection Agency , U.S. Court of Appeals for the District of Columbia Circuit, Case No. 11-1128

Procedural History:

05/04/2011 Petition for Review
06/01/2011 Texas' Motion for Coordination of Related Cases before a single panel
06/06/2012 EPA Motion for Abeyance
06/13/2011 EPA Motion (opposing Texas' Motion for Coordination and instead motions for consolidation)
07/07/2011 Texas' opposition to EPA's Motion to Consolidate.
12/01/2011 Order (Resolves the numerous pending motions and the show cause order regarding abeyance by: (1) referring EPA's motion to dismiss to the merits panel and directing that it be briefed with the merits briefing; (2) consolidating the two cases; and (3) requiring submission of proposed briefing formats by 01/27/2012.)

Briefing Schedule (Texas's opening brief due 6/18/12; EPA brief due 8/17/12; Intervenors' brief due 9/7/12; Texas reply brief due 9/21/12; Joint Appendix due 10/5/12; Final brief due 10/12/12)

Case Summary: Texas is challenging the EPA's "Determination Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and FIP Regarding

Texas PSD Program (Partial SIP Disapproval/GHG FIP), Final Rule" that was final and effective May 1, 2011. The petition is based on the following: the action is contrary to both the CAA and fundamental principles of administrative law, and is arbitrary and capricious and contrary to law.

B. SIP Gap Litigation

1. Qualified Facilities

Texas Oil and Gas Association et al. v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the 5th Circuit, Case No. 10-60459

Procedural History :

06/14/2010 Petition for review filed with the 5th Circuit Court of Appeals
10/12/2010 Petitioners' briefs filed
12/20/2010 EPA's Response brief filed
01/18/2011 Petitioners' Reply briefs filed
07/06/2011 Oral argument held; case under submission

09/15/2010 Agenda; TCEQ adopted rule changes

- **Case Summary:** This challenges the EPA's final disapproval of the TCEQ's 1996 Qualified Facilities (QF) rules (and as readopted in 1998), which the EPA disapproved on April 14, 2010. The EPA disapproved the rules when it found that they do not meet the requirements of the Clean Air Act and the EPA's regulations, based on the following grounds: (1) the rules are unclear as to whether they are for a major or minor new source new-source-review (NSR) SIP revision; (2) the rules are not approvable as a substitute major NSR SIP revision; and (3) the rules are not approvable as a minor NSR SIP revision. EPA's disapproval was arbitrary and capricious, and exceeds EPA's statutory authority. The QF program is clearly a minor new source review (NSR) only program that meets the requirements for approval of a minor NSR program as a revision to the SIP. Further, the QF program does not circumvent major NSR. EPA must give great weight and deference to state law that created the QF program when reviewing minor NSR SIP revisions.

2. Flexible Permits

State of Texas et al. v. U.S. Environmental Protection Agency, United States Court of Appeals for the 5th Circuit, Case No. 10-60614

Procedural History:

07/26/2010 Petition for Review filed
12/06/2010 Petitioners' Briefs filed
02/22/2011 Response Briefs filed
03/17/2011 Reply Briefs filed
10/04/2011 Oral Argument held; case under submission.

12/14/2010 Agenda; Adopted rule changes

Case Summary: This challenges the EPA's final disapproval of the TCEQ's 1994 Flexible Permits (FP) rules (and some related later rulemakings), which the EPA disapproved on July 15, 2010. EPA has argued disapproval was proper because states do not have unfettered discretion in their minor NSR programs. Specifically, the disapproval was proper because the FP program can interfere with major NSR; the rules do not clearly limit the program to minor NSR; the monitoring, recordkeeping and reporting requirements are not commensurate with the complexity of the program and are not sufficient to ensure permits contain enforceable limits; and the FP fails to describe in sufficient detail the calculation methodologies and underlying analyses used to determine the cap. Finally, the EPA's failure to meet the statutory deadline for final action on the SIP revision is irrelevant to the merits of the case. However, TCEQ has argued EPA's disapproval was arbitrary and capricious, and is contrary to law. The FP program is clearly a minor new source review (NSR) only program that meets the requirements for approval of a minor NSR program as a revision to the Texas permitting SIP. Further, the FP program specifically requires the same monitoring, recordkeeping and reporting requirements that are in the approved minor NSR permitting SIP; includes appropriate methods for establishing emissions caps; requires sources to comply with major NSR requirements; and does not circumvent major NSR. EPA has limited authority over minor NSR programs, and it is contrary to law for EPA to substitute its interpretation of state rules for TCEQ's interpretation. EPA must give deference to Texas in its interpretation of state law that created the FP program when reviewing the FP minor NSR SIP revision. Finally, EPA failed to explain its disapproval in connection with the Program's 16-Year History.

3. New Source Review Reform (PCP Standard Permit)

Luminant Generation Co., LLC, et al. v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the 5th Circuit, Case No. 10-60891

Procedural History:

11/12/2010	Petition for Review filed
04/06/2011	Petitioners' Briefs filed
06/06/2011	Response Brief filed
07/15/2011	Reply Brief filed
12/07/2011	Oral Argument; case under submission
03/26/2012	Order vacating disapproval and remanding back to EPA
05/18/2012	Mandate issued

02/09/2011 Agenda; Amended PCP SP rule and adopted a new non-rule PCP SP

Case Summary: This challenges the EPA's final disapproval on Sept. 15, 2010, of the TCEQ's rules regarding changes adopted (a) in 2005 to implement the 1997 8-hour Ozone Standard adopted in 2005, and (b) in 2006 to implement the EPA's New Source Review (NSR) Reform Rules (which included changes to a Pollution Control Project Standard Permit [PCP SP] Rule). The EPA disapproved the rules when it found that they do not meet the requirements of the Clean Air Act and the EPA's regulations, based on the following grounds: (1) the plant-wide applicability

limit (PAL) rules do not include text necessary for approval as a SIP revision, (2) certain other rules do not meet the requirements for approval as major NSR non-PAL SIP revision, and (3) the standard permit rule is not approvable as a minor NSR SIP revision. The focus of the state challenge is the EPA's disapproval of the Pollution Control Project Standard Permit.

4. SB 7

Luminant Generation Co., LLC, et al. v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the 5th Circuit, Case No. 11-60158

Procedural History:

03/14/2011	Petition for Review filed
05/09/2011	Order granting abeyance pending outcome of above PCP SP appeal
03/26/2012	Abeyance lifted; deadline for EPA to file administrative record is 06/04/2012

Case Summary: Texas is challenging the EPA's final rule published in the *Federal Register* at 76 Fed. Reg. 1525 (Jan. 11, 2011) and titled "Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and Electing Electric Generating Facilities." The EPA approved all revisions of the Texas State Implementation Plan (SIP) submitted by the TCEQ on Jan. 3, 2000, and July 31, 2002, as supplemented on Aug. 5, 2009, except 30 TAC 116.911(a)(2), which allows use of a Pollution Control Project Standard Permit. These revisions are to regulations of the TCEQ that relate to application and permitting procedures for grandfathered electric generating facilities (EGFs), implementing Senate Bill 7 to achieve nitrogen oxide (NOx), sulfur dioxide (SO_2), and particulate matter (PM) emission reductions from grandfathered EGFs.

5. Emissions Events

Luminant Generation Company et al. v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the 5th Circuit, Case No. 10-60934

Case Summary: Texas is not a party to this case, which challenges the EPA's action on Nov. 10, 2010, regarding the TCEQ's Emissions Events Rules, which were adopted in December 2005 (effective January 2006). Instead, Texas filed an amicus brief (a) in support of the EPA's approval of emissions events rules regarding reporting requirements, and affirmative defense for excess emissions from emissions events and unplanned maintenance, startup, and shutdown (MSS) activities, and (b) in opposition of the EPA's disapproval of the rules that provide an affirmative defense for planned MSS activities. Case is under submission 02/07/2012.

C. SO2 NAAQS

State of Texas and Texas Commission on Environmental Quality v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia Circuit, Case no. 10-1259

Procedural History:

08/23/2010	Petitions for Reconsideration and Review
09/13/2011	State and Non-State Petitioners' and Intevenors' Opening Brief
11/14/2011	EPA Response
05/03/2012	Oral Argument; case under submission

Case Summary: Texas is challenging the EPA's final rule promulgating a new SO_2 NAAQS, and proposing designation and implementation requirements for states. Texas' arguments: (1) The EPA did not provide legally adequate notice and opportunity for comment on the form of the new Primary National Ambient Air Quality Standard (NAAQS) for Sulfur Dioxide (SO_2). (2) The EPA did not provide legally adequate notice and opportunity for comment on the requirement that dispersion modeling must be used to determine attainment with the Primary National Ambient Air Quality Standard (NAAQS) for Sulfur Dioxide (SO_2). (3) The EPA did not provide legally adequate notice and opportunity for comment on the requirement that all areas, whether designated as attainment, nonattainment, or unclassifiable, must submit maintenance plans to demonstrate maintenance and attainment of the NAAQS for SO_2. (4) The requirement that dispersion modeling must be used to determine attainment with the NAAQS for SO_2 is contrary to congressional intent.

D. PM2.5 NAAQS

State of Texas and Texas Commission on Environmental Quality v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 10-1415

Procedural History:

12/20/2010	Petitions for Reconsideration and Review filed.
12/22/2010	DC Court issued order consolidating TCEQ's Petition with Sierra Club's Petition
04/18/2011	EPA unopposed motion and court order to hold the case in abeyance
06/10/2011	EPA partially granted the petition for reconsideration
06/17/2011	TCEQ and EPA filed a joint motion to hold in abeyance on based on EPA's response to the petition for reconsideration.
07/01/2011	TCEQ filed a response in opposition to Sierra Club's motion to govern further proceedings.
09/06/2011	Order issued holding TCEQ petition in abeyance pending EPA action, and severing Sierra Club petition and ordering briefing schedule.

Case Summary: Texas is challenging the EPA's final rule of Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) – Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentration (SMC). Texas'

arguments: the EPA made substantial rule changes and interpretations in the final rule that were not properly noticed under the federal Administrative Procedures Act, and not a logical outgrowth of the proposed rule. The following changes complicate the modeling process and create unnecessary confusion for regulators and the regulated community: (1) Regulation of SILs using inconsistent definitions found in three different CFRs. (2) The EPA's conclusion that SILs are not mandatory. (3) The EPA's decision to include precursor emissions in the significant-impact-area determination by guidance and not through rulemaking at a future date. (4)Adoption of a new definition of "baseline area" for $PM_{2.5}$. (5) Adoption of a procedure for determining significant-impact area for $PM_{2.5}$ that differs significantly from the procedure used for PM_{10}. And (6) adoption of a lower SMC than proposed.

E. Mercury Air Toxics Standard (MATS)

State of Texas, Texas Commission on Environmental Quality, Texas Public Utility Commission, and Railroad Commission of Texas v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 12-1185

Procedural History:

04/13/2012	Petition for Reconsideration filed
04/16/2012	Petition for Review filed
04/27/2012	Joint Motion by Developers of New Solid-Fueled Electric Generating Units to Sever and Expedite Consideration of Issues Germane to Hazardous Air Pollutant Standards Applicable to New Units

Case Summary: Mercury and Air Toxics Standard (MATS) - On December 16, 2011, the United States Environmental Protection Agency (EPA) Administrator signed the final National Emission Standards for Hazardous Air Pollutants (NESHAP) rule for electric utility steam generating units (EGU) that generate electricity for sale. The final utility NESHAP rule, also called the Mercury and Air Toxics Standards (MATS), is adopted in 40 Code of Federal Regulations (CFR) Part 63, Subpart UUUUU. In the final rule, EPA promulgated MACT emissions limits for existing, reconstructed, and new EGUs rated greater than 25 megawatts (MW) that are fired on coal, liquid oil, or solid oil-derived (i.e., petroleum coke) fuels as well as to existing and new integrated gasification combined cycle (IGCC) EGUs. The final rule also revised the new source performance standards (NSPS) for new fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units in 40 CFR Part 60, Subpart Da.

F. Cross State Air Pollution Rule

EME Homer City Generation, L.P. v. U.S. Environmental Protection Agency, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 11-1338

Procedural History:

09/20/2011	Petition for Review
12/20/2011	Motion for Stay granted
02/09/12	Petitioners' briefs

02/14/2012 Amicus briefs
03/01/2012 EPA's brief
04/13/2012 Oral Argument; case under submission.

Case Summary: Texas is challenging the EPA's Cross State Air Pollution Rule (CSAPR), which the EPA is using to replace CAIR, which was partially remanded, and partially vacated, by the D.C. Circuit. The rule is also being challenged by Texas electric generating utilities, including Luminant and San Miguel, and Pennsylvania's EME Homer City Generation LP. It is possible that other states, and other EGUs, will also be challenging this rule.

Texas' arguments: The EPA impermissibly included Texas in the final CSAPR for $PM_{2.5}$, after not including Texas in the proposed rule, therefore Texas was deprived of its legal opportunity to comment on its inclusion in the final rule. The lack of notice deprived Texas of the opportunity to comment on fatal flaws in the EPA's modeling that shows Texas to be contributing to a monitor in Illinois that is both attaining the $PM_{2.5}$ NAAQS and heavily locally influenced. The EPA failed to consider the impacts of the rule on electric reliability in Texas, and the rule will cause irreparable harm in Texas if it is not stayed. Texas is also challenging the rule based on the new inclusion of Texas for ozone maintenance to a monitor that was not included in the proposed rule. Texas is challenging the rule more broadly and asking for vacatur based on the many flaws in the rule, addressed in both our original comments and our two petitions to the EPA administrator.

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